

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	No. CR12-098RSM
Plaintiff,	)	
	)	DEFENSE ADVISORY SENTENCING
v.	)	GUIDELINE CALCULATIONS
	)	
DJUAN O. GARDNER,	)	
	)	
Defendant.	)	

DEFENDANT DJUAN O. GARDNER submits his advisory sentencing guideline calculations as follows:

Base Offense Level	22
Specific Offense Characteristic	<u>+4</u>
Adjusted Offense Level	26
Acceptance of Responsibility	-3
Departure	-3

The defendant is still pending sentencing in Case No. 11-1-01304-5 KNT for an Eluding in which the defendant was sentenced to a prison based DOSA. See par. 58. This conviction for an offense committed on January 17, 2011, has wreaked havoc with the calculation of the defendant's advisory sentencing guidelines. It is responsible for an additional +3 levels. Not only is an Eluding considered a crime of violence, which results in elevating the defendant's base offense +2 levels, this conviction has also added three criminal

1 history points to the defendant's criminal history category. See also par. 65. This, in turn, has  
2 elevated the defendant's criminal history category from CHC IV to CHC IV. Moreover this  
3 conviction is still pending revocation and sentencing in the state court after the defendant's  
4 term of confinement in this case is concluded. While there is no basis for predicting what that  
5 state court will do at that time, it appears more than likely the state court will impose an  
6 additional 3-6 month term of incarceration. Accordingly the defense seeks a -3 level departure  
7 to adjust for the overrepresentation this conviction has had on the calculation of the  
8 defendant's advisory sentencing guideline calculations.

9  
10 Total Offense Level 20  
11 CHC V  
12 Confinement range 63-78 months

13 Respectfully submitted,

14  
15 *s/Robert M. Leen*  
16 Robert M. Leen  
17 Attorney for Defendant  
18

19 CERTIFICATE OF SERVICE

20 I hereby certify that I electronically filed the foregoing pleading under  
21 seal with the Clerk of the Court using the CM/ECF system this 10th day of  
22 October 2012. Any non-CM/ECF party has been served via facsimile or  
23 email.

24 *s/Robert M. Leen*  
25 Robert M. Leen